

JBH:jbh 7/6/07 724578 QP96008 US CON
PATENT

Attorney Reference Number 6454-68359-01
Application Number 10/823,471

REMARKS

Claims 48-73 were pending in this application. Claims 48, 50-53, 59, and 70 are amended herein. Claims 49 and 55-57 are canceled herein. Applicants expressly reserve the right to prosecute any canceled subject matter in a continuation application.

Following entry of this amendment, claims 48, 50-54 and 58-73 are pending.

ALLOWABLE SUBJECT MATTER

Applicants thank the examiner for indicating that claims 50, 57, and 70-73 are objected to but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims. Independent claim 48 has been amended to include the subject matter of dependent claims 49 and 55-57, and therefore should now be allowable. Dependent claims 51-54 and 58-69 depend from independent claim 48 and should also be allowable.

Dependent claims 50 and 70 have been rewritten in independent form incorporating all of the limitations of the claims as previously presented and should now be allowable. Dependent claims 71-73 depend from independent claim 70 and therefore should also be allowable.

THE OBJECTION TO THE SPECIFICATION SHOULD BE WITHDRAWN

The specification is objected to under 37 C.F.R. §1.75(d)(1) as allegedly failing to provide proper antecedent basis for the claimed subject matter. More specifically, the Office action alleges that the specification does not provide proper antecedent basis for the term "intermediate valve element". Applicant disagrees.

Under 37 C.F.R. §1.75(d)(1), claim terms "must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by the reference to the description." Claim terms need not have word-for-word correspondence in the description so long as the meaning of the claim terms can be ascertained by reference to the description. Col. 9, line 62-col. 10, line 5 of the original patent describes a stator 26 and a rotor 40 in mutual fluid sealing sliding contact on a valve surface 45. The valve surface 45 can be a flat disc, cone, cylinder, or other surface of revolution (Col. 10, lines 53-55.) The valve surface 45 is intermediate the stator 36 and the rotor 40, and therefore provides proper antecedent basis for the limitation "intermediate valve element."

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Accordingly, Applicants request withdrawal of the rejection under 37 C.F.R. § 1.75(d)(1).

THE OBJECTION UNDER 37 C.F.R. § 1.175(a)(1) SHOULD BE WITHDRAWN

The reissue oath/declaration stands rejected as defective because “the error which is relied upon to support the reissue application is not an error upon which a reissue can be based.” The action states “[a] new declaration . . . stating an error in the new claims” is required. In a telephonic conference on 6/11/07 between Applicant’s representative and Examiner Lawrence, Examiner Lawrence clarified this to mean that the declaration must explain how at least one new claim corrects an error in an original patent claim. A new Declaration is submitted herewith, which states that pending claim 48 does not contain an unnecessary limitation from claim 1 of the patent. The Declaration further states: “the original patent claims did not recite a rotary distributor valve as specifically recited in pending claim 48”. Accordingly, Applicants request withdrawal of the rejection based upon a defective oath/declaration under 37 C.F.R. § 1.175(a)(1).

THE REJECTION UNDER 35 U.S.C. § 251 OF CLAIMS 48-73 SHOULD BE WITHDRAWN

Claims 48-73 are rejected as allegedly being based upon a defective reissue Declaration under 35 U.S.C. § 251. As noted, a new reissue Declaration is submitted herewith. Accordingly, Applicants request withdrawal of the rejection based upon a defective reissue Declaration under 35 U.S.C. § 251.

THE REJECTION UNDER 35 U.S.C. § 112 SHOULD BE WITHDRAWN

Claim 51 is rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter. Claim 51 is hereby amended to overcome the rejection based upon 35 USC § 112. Specifically, the term “intermediate valve” in line 1 of claim 51 is hereby amended to read “the intermediate valve element,” as suggested by the action.

Accordingly, Applicants request withdrawal of the rejection under 35 U.S.C. § 112.

THE REJECTIONS UNDER 35 U.S.C. § 102 AND 35 U.S.C. § 103(a) SHOULD BE WITHDRAWN

Claims 48, 49, 51-55, and 59 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Poschl *et al.* (5,584,322). Claims 48, 49, 51-56, 59-61 and 63-69 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Miwa *et al.* (4,705,627). Claims 58 and 62 are rejected

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under 35 U.S.C. 103(a) as allegedly being unpatentable over *Miwa et al.* '627 in view of *Poschl et al.* '322. Applicants traverse these rejections.

As stated above, independent claim 48 has been amended to include subject matter of claims 48 and 55-57. Dependent claim 57 was objected to for depending from a rejected base claim but would be allowable if rewritten in independent form. Thus, independent claim 48 and dependent claims 51-54 and 58-69 should now be allowable and the rejection of these claims should be withdrawn.

SUPPORT FOR CLAIM AMENDMENTS PURSUANT TO 37 C.F.R. § 1.173(c)

Independent claim 48 has been rewritten to include the subject matter of claims 49 and 55-57 and claims 50 and 70 have been rewritten in independent form. Because no previously unclaimed subject matter has been added to the claims by this Amendment, support for the amended claims can be found on pages 7 and 8 of the Amendment filed October 11, 2005.

CONCLUDING STATEMENT

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Withdrawal of the pending rejections and allowance of the claims is respectfully requested. If the Examiner believes that there are any remaining issues in the case that could be resolved by a telephonic interview, the Examiner is encouraged to contact the representative for Applicants listed below to discuss any outstanding matters.

Respectfully submitted,

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PATENT

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SUPPLEMENTAL DECLARATION FOR REISSUE APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

We are an original, first and joint inventor of the subject matter which is described and claimed in United States Patent No. 6,063,161, granted May 16, 2000, and for which a reissue patent is sought on the invention entitled **FLOW REGULATED PRESSURE SWING ADSORPTION SYSTEM**, the specification of which was filed on April 12, 2004 as United States Reissue Application No. 10/823,471, which is a continuation of United States Reissue Patent Application No. 10/150,784, filed May 16, 2002, now RE38,493.

I have reviewed and understand the contents of the above identified specification, including the claims.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56.

I believe the original patent to be wholly or partly inoperative or invalid by reason that the patent claims less than I had a right to claim in the patent. Thus, I hereby indicate my intent to seek broadened claims. My intent to seek broadened claims also is indicated by the Amendment filed with this Supplemental Declaration. At least one error upon which reissue is based is described below. I also hereby affirm that this reissue application was filed diligently upon discovery of the errors listed below.

At least the following errors upon which reissue are based are described as follows:

Claim 1, for example, includes certain features that are not required for practicing the broadest aspects of the invention, such as requiring a process for separating first and second components of a feed gas mixture, as referred to in column 29, lines 4-5. This unnecessary limitation renders the patent partly inoperative by unduly limiting the claim. Pending claim 48 does not contain this limitation. Further, the original patent claims did not recite a rotary distributor valve as specifically recited in pending claim 48. These errors arose in the prosecution of the original application, which resulted in the issuance of the patent.

All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant or the inventors.

I hereby grant the law firm of Klarquist Sparkman, LLP, the power to insert on this Supplemental Declaration any further identification which may be necessary or desirable in order to comply with the rules of the United States Patent and Trademark Office for submitting this document.

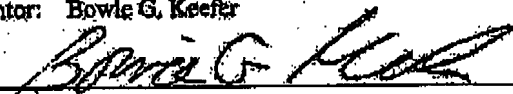
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Attorney Reference No. 6454-68359-01

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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Jun. 11. 2007 2:27PM Queslair Technologies Inc.

No. 4067 P. 1

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JRE:la 4/11/07 624-6839-01

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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